# Register of Actions

## Case No. 16-DCV-236818

**Tarsem Agarwal vs Mt. Hawley Insurance Company, Kevin Wilson Mayfield** § § § § §

Case Type: **Contract - Consumer/Commercial/Debt**
Date Filed: **11/04/2016**
Location: **434th District Court**

### Party Information

| | | Attorneys |
|---|---|---|
| **Defendant or Respondent** | **Mayfield, Kevin Wilson**<br>Pearland, TX 77584 | |
| **Defendant or Respondent** | **Mt. Hawley Insurance Company**<br>Peoria, IL 61615-1432 | |
| **Plaintiff or Petitioner** | **Agarwal, Tarsem**<br>Houston, TX 77084 | **Chad T Wilson**<br>*Retained*<br>832-415-1432(W) |

### Events & Orders of the Court

OTHER EVENTS AND HEARINGS

| | |
|---|---|
| 11/04/2016 | **Docket Sheet** |
| 11/04/2016 | **Petition** **Doc ID# 1**<br>*Plaintiff's Original Petition* |
| 11/04/2016 | **Case Information Sheet**<br>*Civil Case Information Sheet* |
| 11/04/2016 | **Letters**<br>*Cover Letter* |

### Financial Information

| | | | | |
|---|---|---|---|---|
| | **Plaintiff or Petitioner** Agarwal, Tarsem | | | |
| | Total Financial Assessment | | | 545.00 |
| | Total Payments and Credits | | | 545.00 |
| | **Balance Due as of 11/07/2016** | | | **0.00** |
| 11/04/2016 | Transaction Assessment | | | 545.00 |
| 11/04/2016 | E-filing | Receipt # 2016-62861-DCLK | Agarwal, Tarsem | (545.00) |

**EXHIBIT A**

Filed
11/4/2016 9:28:47 AM
Annie Rebecca Elliott
District Clerk
Fort Bend County, Texas
Debra Elizondo

# CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): 16-DCV-236818 COURT (FOR CLERK USE ONLY): Fort Bend County - 434th Judicial District Court

STYLED TARSEM AGARWAL VS. MT. HAWLEY INSURANCE COMPANY AND KEVIN WILSON MAYFIELD

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

**1. Contact information for person completing case information sheet:**

Name: Chad T. Wilson

Email: cwilson@cwilsonlaw.com

Address: 1322 Space Park Drive, Suite A155

Telephone: 832-415-1432

City/State/Zip: Houston, Texas 77058

Fax: 281-940-2137

Signature:

State Bar No: 24079587

**Names of parties in case:**

Plaintiff(s)/Petitioner(s): Tarsem Agarwal

Defendant(s)/Respondent(s): Mt. Hawley Insurance Company and Kevin Wilson Mayfield

[Attach additional page as necessary to list all parties]

**Person or entity completing sheet is:**

☒ Attorney for Plaintiff/Petitioner
☐ *Pro Se* Plaintiff/Petitioner
☐ Title IV-D Agency
☐ Other: ______

Additional Parties in Child Support Case:

Custodial Parent: ______

Non-Custodial Parent: ______

Presumed Father: ______

**2. Indicate case type, or identify the most important issue in the case *(select only 1)*:**

## *Civil*

**Contract**

*Debt/Contract*
☒ Consumer/DTPA
☐ Debt/Contract
☐ Fraud/Misrepresentation
☐ Other Debt/Contract: ______

*Foreclosure*
☐ Home Equity—Expedited
☐ Other Foreclosure
☐ Franchise
☐ Insurance
☐ Landlord/Tenant
☐ Non-Competition
☐ Partnership
☐ Other Contract: ______

**Injury or Damage**

☐ Assault/Battery
☐ Construction
☐ Defamation
*Malpractice*
☐ Accounting
☐ Legal
☐ Medical
☐ Other Professional Liability: ______
☐ Motor Vehicle Accident
☐ Premises
*Product Liability*
☐ Asbestos/Silica
☐ Other Product Liability List Product: ______
☐ Other Injury or Damage: ______

**Real Property**

☐ Eminent Domain/ Condemnation
☐ Partition
☐ Quiet Title
☐ Trespass to Try Title
☐ Other Property: ______

**Related to Criminal Matters**

☐ Expunction
☐ Judgment Nisi
☐ Non-Disclosure
☐ Seizure/Forfeiture
☐ Writ of Habeas Corpus—Pre-indictment
☐ Other: ______

**Employment**

☐ Discrimination
☐ Retaliation
☐ Termination
☐ Workers' Compensation
☐ Other Employment: ______

**Other Civil**

☐ Administrative Appeal
☐ Antitrust/Unfair Competition
☐ Code Violations
☐ Foreign Judgment
☐ Intellectual Property
☐ Lawyer Discipline
☐ Perpetuate Testimony
☐ Securities/Stock
☐ Tortious Interference
☐ Other: ______

## *Family Law*

**Marriage Relationship**

☐ Annulment
☐ Declare Marriage Void
*Divorce*
☐ With Children
☐ No Children

**Post-judgment Actions (non-Title IV-D)**

☐ Enforcement
☐ Modification—Custody
☐ Modification—Other

**Title IV-D**

☐ Enforcement/Modification
☐ Paternity
☐ Reciprocals (UIFSA)
☐ Support Order

**Other Family Law**

☐ Enforce Foreign Judgment
☐ Habeas Corpus
☐ Name Change
☐ Protective Order
☐ Removal of Disabilities of Minority
☐ Other: ______

**Parent-Child Relationship**

☐ Adoption/Adoption with Termination
☐ Child Protection
☐ Child Support
☐ Custody or Visitation
☐ Gestational Parenting
☐ Grandparent Access
☐ Parentage/Paternity
☐ Termination of Parental Rights
☐ Other Parent-Child: ______

**Tax**

☐ Tax Appraisal
☐ Tax Delinquency
☐ Other Tax

***Probate & Mental Health***

*Probate/Wills/Intestate Administration*
☐ Dependent Administration
☐ Independent Administration
☐ Other Estate Proceedings
☐ Guardianship—Adult
☐ Guardianship—Minor
☐ Mental Health
☐ Other: ______

**3. Indicate procedure or remedy, if applicable *(may select more than 1)*:**

☐ Appeal from Municipal or Justice Court
☐ Arbitration-related
☐ Attachment
☐ Bill of Review
☐ Certiorari
☐ Class Action
☐ Declaratory Judgment
☐ Garnishment
☐ Interpleader
☐ License
☐ Mandamus
☐ Post-judgment
☐ Prejudgment Remedy
☐ Protective Order
☐ Receiver
☐ Sequestration
☐ Temporary Restraining Order/Injunction
☐ Turnover

**4. Indicate damages sought *(do not select if it is a family law case)*:**

☐ Less than $100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
☐ Less than $100,000 and non-monetary relief
☐ Over $100,000 but not more than $200,000
☐ Over $200,000 but not more than $1,000,000
☒ Over $1,000,000

**EXHIBIT B**

Filed
11/4/2016 9:28:47 AM
Annie Rebecca Elliott
District Clerk
Fort Bend County, Texas
Debra Elizondo

CAUSE NO. 16-DCV-236818

| | | |
|---|---|---|
| TARSEM AGARWAL, | § | IN THE JUDICIAL COURT OF |
| Plaintiff, | § | |
| | § | |
| V. | § | |
| | § | FORT BEND COUNTY, TEXAS |
| MT. HAWLEY INSURANCE COMPANY AND KEVIN WILSON MAYFIELD, | § | |
| | § | Fort Bend County - 434th Judicial District Court |
| | § | |
| Defendants. | § | ______ DISTRICT COURT |

**PLAINTIFF'S ORIGINAL PETITION, JURY DEMAND, AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Tarsem Agarwal, ("Plaintiff"), and files **Plaintiff's Original Petition, Jury Demand, and Request for Disclosure**, complaining of Mt. Hawley Insurance Company (Mt. Hawley) and Kevin Wilson Mayfield ("Mayfield") (or collectively "Defendants") and for cause of action, Plaintiff respectfully shows the following:

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3, Texas Rules of Civil Procedure 190.4 and 169.

**PARTIES**

2. Plaintiff's properties are located in Fort Bend County, Texas.

3. Defendant, Mt. Hawley Insurance Company, is an Illinois insurance company and registered with the Texas Department of Insurance to engage in the business of insurance in the State of Texas. Plaintiff requests service of citation upon Mt. Hawley Insurance

**EXHIBIT B**

Company through its registered agent for service: **CEO and/or President, 9025 North Lindbergh Drive, Peoria, IL 61615-1432**. Plaintiff requests service at this time.

4. Defendant Kevin Wilson Mayfield is an individual resident of Pearland, Texas. Mayfield may be served with citation at the address listed with the Texas Department of Insurance: **4907 Meadowglen Drive, Pearland, Texas 77584**. Plaintiff requests service at this time.

## JURISDICTION

5. The Court has jurisdiction over Mt. Hawley because this Defendant engages in the business of insurance in the State of Texas, and the causes of action arise out of Mt. Hawley's business activities in the State of Texas, including those in Fort Bend County, Texas, with reference to this specific case.

6. The Court has jurisdiction over Mayfield because this Defendant engages in the business of adjusting insurance claims in the State of Texas, resides in the State of Texas, and the causes of action arise out of this Defendant's business activities in the State of Texas, including those in Fort Bend County, Texas, with reference to this specific case.

## VENUE

7. Venue is proper in Fort Bend County, Texas because the insured properties are located in Fort Bend County, Texas, and all or a substantial part of the events giving rise to this lawsuit occurred in Fort Bend County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.032.

## FACTS

8. Plaintiff asserts claims for fraud, breach of contract, violations of sections 541 and 542 of the Texas Insurance Code, and violations of the Texas DTPA.

**EXHIBIT B**

9. Plaintiff owns a Mt. Hawley Insurance Company commercial insurance policy, number MCP0160851 ("the Policy"). At all relevant times, Plaintiff owned the insured premises located at 3806 Avenue I, Rosenberg, Texas 77471 and 3926 Avenue H, Rosenberg, Texas 77471 ("the Properties").

10. Mt. Hawley or its agent sold the Policy, insuring the Properties, to Plaintiff. Mt. Hawley or its agent represented to Plaintiff that the Policy included wind and hailstorm coverage for damage to Plaintiff's commercial properties. Mt. Hawley has refused the full extent of that coverage currently owed to Plaintiff.

11. On or about 04/12/2016, the Properties sustained extensive damage resulting from a severe storm that passed through the Rosenberg, Texas area.

12. In the aftermath of the wind and hailstorm, Plaintiff submitted a claim to Mt. Hawley against the Policy for damage to the Properties. Mt. Hawley assigned claim number 00422910 to Plaintiff's claim.

13. Plaintiff asked Mt. Hawley to cover the cost of damage to the Properties pursuant to the Policy.

14. Damaged areas of the properties include, but are not limited to the roof, exhaust caps, ventilators; HVAC, flashing, pipe jacks, fiberboard.

15. Mt. Hawley assigned or hired Mayfield to adjust the claim.

   a. Mayfield had a vested interest in undervaluing the claims assigned to him by Mt. Hawley in order to maintain his employment.

   b. Furthermore, Mayfield was aware of Plaintiff's deductible before having the

EXHIBIT B

Properties inspected. Mayfield had advanced knowledge of what amount of damages would need to be found in order to either deny the claim or find the claim below the deductible.

c. Mayfield made misrepresentations as to the amount of damage Plaintiff's Properties sustained as well as misrepresentations regarding how much it would cost to repair the damage to Plaintiff's Properties.

d. Mayfield also made misrepresentations to the tenants of the Properties about the interior leaks to bolster Mt. Hawley's denial of the claim.

16. Mt. Hawley, through its agents, namely Mayfield, conducted a substandard and improper inspection and adjustment of the Properties, which yielded grossly inaccurate and unrealistic assessments of the cause, extent, and dollar amount of damage to the Properties.

17. The initial adjustment of the claim occurred sometime between May and June 2016. Mayfield and/or Mt. Hawley found that there was no damage from a covered peril to the roof of the properties.

18. To date, Plaintiff has received $0.00 for damage to Plaintiff's Properties. The damage to Plaintiff's Properties is currently estimated at $531,270.66 for the 3926 Avenue H, Rosenberg, Texas 77471 property and $539,245.70 for the 3806 Avenue I, Rosenberg, Texas 77471 property.

19. Mt. Hawley has not communicated that any future settlements or payments would be forthcoming to pay for the entire loss covered under the Policy, nor did it provide any explanation for failing to settle Plaintiff's claim properly.

20. As stated above, Defendants failed to assess the claim thoroughly. Based upon Defendants'

grossly unreasonable, intentional, and reckless failure to investigate and adjust the claim properly, Mt. Hawley failed to provide full coverage due under the Policy.

21. As a result of Mt. Hawley's failure to provide full coverage, along with Mt. Hawley's delay tactics to avoid reasonable payment to Plaintiff, Plaintiff has suffered damages.

22. Mt. Hawley failed to perform its contractual duties to Plaintiff under the terms of the Policy. Specifically, Mt. Hawley refused to pay the full proceeds of the Policy, although due demand was made for an amount sufficient to cover repairs to the damaged Properties, and all conditions precedent to recover upon the Policy were accomplished by Plaintiff.

23. Defendants' misrepresentations, unreasonable delays, and continued denials constitute a breach of the statutory obligations under Chapters 541 and 542 of the Texas Insurance Code. Thus, the breach of the statutory duties constitutes the foundation of a breach of the insurance contract between Mt. Hawley and Plaintiff.

24. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(1). Defendants have not attempted to settle Plaintiff's claim in a fair manner, even though Defendants were aware of their liability to Plaintiff under the Policy. Specifically, Defendants have failed to timely pay Plaintiff's coverage due under the Policy.

25. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(2)(A). Defendants failed to provide Plaintiff a reasonable explanation for not making the full payment under the terms of the Policy.

26. Defendants' conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a)(4). Defendants refused to provide full coverage

EXHIBIT B

due to Plaintiff under the terms of the Policy. Specifically, Mt. Hawley, through its agents, servants, and representatives, namely Mayfield, performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiff's losses on the Properties.

27. Defendants' conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.055. Defendants failed to reasonably accept or deny Plaintiff's full claim within the statutorily mandated time after receiving all necessary information.

28. Defendants' conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056. Defendants failed to meet their obligations under the Texas Insurance Code regarding timely payment of the claim. Specifically, Defendants have delayed payment of Plaintiff's claim longer than allowed, and Plaintiff has not received full payment for the claim.

29. Defendants' wrongful acts and omissions forced Plaintiff to retain the professional services of the attorneys and law firm representing Plaintiff with respect to these causes of action.

## CAUSES OF ACTION AGAINST DEFENDANT MT. HAWLEY INSURANCE COMPANY

### BREACH OF CONTRACT

30. All allegations above are incorporated herein.

31. Mt. Hawley is liable to Plaintiff for intentional violations of the Texas Insurance Code, and intentional breach of the common law duty of good faith and fair dealing. It follows, then,

EXHIBIT B

that the breach of the statutory duties constitutes the foundation of an intentional breach of the insurance contract between Mt. Hawley and Plaintiff.

32. Mt. Hawley's failure and/or refusal to pay adequate coverage as obligated under the terms of the Policy, and under the laws of the State of Texas, constitutes a breach of the insurance contract with Plaintiff.

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE: UNFAIR SETTLEMENT PRACTICES**

33. All allegations above are incorporated herein.

34. Mt. Hawley's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a). All violations under this article are actionable by TEX. INS. CODE §541.151.

35. Mt. Hawley's unfair settlement practice of misrepresenting to Plaintiff material facts relating to coverage constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(1).

36. Mt. Hawley's unfair settlement practice of failing to attempt in good faith to make a prompt, fair, and equitable settlement of the claim, even though liability under the Policy was reasonably clear, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(2)(A).

37. Mt. Hawley's unfair settlement practice of failing to provide Plaintiff a prompt and reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for partial denial of the claim, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(3).

**EXHIBIT B**

38. Mt. Hawley's unfair settlement practice of failing within a reasonable time to affirm or deny coverage of the claim to Plaintiff constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(4).

39. Mt. Hawley's unfair settlement practice of refusing to pay Plaintiff's claim without conducting a reasonable investigation constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(7).

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE: THE PROMPT PAYMENT OF CLAIMS**

40. All allegations above are incorporated herein.

41. Mt. Hawley's conduct constitutes multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are actionable by TEX. INS. CODE §542.060.

42. Mt. Hawley's failure to notify Plaintiff in writing of its acceptance or rejection of the full claim within the applicable time constraints constitutes a non-prompt payment in violation of TEX. INS. CODE §542.056.

43. Mt. Hawley's delay in paying Plaintiff's claim following receipt of all items, statements, and forms reasonably requested and required, for longer than the amount of time provided, constitutes a non-prompt payment of the claim. TEX. INS. CODE §542.058.

**BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

44. All allegations above are incorporated herein.

45. Mt. Hawley's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to an insured in insurance contracts.

**EXHIBIT B**

46. Mt. Hawley's failure to adequately and reasonably investigate and evaluate Plaintiff's claim, although, at that time, Mt. Hawley knew or should have known by the exercise of reasonable diligence that liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing.

**DTPA VIOLATIONS**

47. All allegations above are incorporated herein.

48. Mt. Hawley's conduct constitutes multiple violations of the Texas Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE 17.41–63. Plaintiff is a consumer of goods and services provided by Mt. Hawley pursuant to the DTPA. Plaintiff has met all conditions precedent to bringing this cause of action against Mt. Hawley. Specifically, Mt. Hawley's violations of the DTPA include, without limitation, the following matters:

A. By its acts, omissions, failures, and conduct, Mt. Hawley has violated sections 17.46(b)(2), (5), (7), (9), (12), (20) and (24) of the DTPA. Mt. Hawley's violations include without limitation, (1) unreasonable delays in the investigation, adjustment, and resolution of Plaintiff's claim, (2) failure to give Plaintiff the benefit of the doubt, and (3) failure to pay for the proper repair of Plaintiff's properties when liability has become reasonably clear, which gives Plaintiff the right to recover under section 17.46(b)(2).

B. Mt. Hawley represented to Plaintiff that the Policy and Mt. Hawley's adjusting and investigative services had characteristics or benefits that they did not possess, which gives Plaintiff the right to recover under section 17.46(b)(5) of the DTPA.

EXHIBIT B

C. Mt. Hawley also represented to Plaintiff that the Policy and Mt. Hawley's adjusting services were of a particular standard, quality, or grade when they were of another, in violation of section 17.46(b)(7) of the DTPA.

D. Furthermore, Mt. Hawley advertised the Policy and adjusting services with the intent not to sell them as advertised, in violation of section 17.46(b)(9) of the DTPA.

E. Mt. Hawley breached an express warranty that the damages caused by wind and hail would be covered under the Policy. This breach entitles Plaintiff to recover under sections 17.46(b)(12) and (20) and 17.50(a)(2) of the DTPA.

F. Mt. Hawley's actions are unconscionable in that Mt. Hawley took advantage of Plaintiff's lack of knowledge, ability, and experience to a grossly unfair degree. Mt. Hawley's unconscionable conduct gives Plaintiff a right to relief under section 17.50(a)(3) of the DTPA; and

G. Mt. Hawley's conduct, acts, omissions, and failures, as described in this petition, are unfair practices in the business of insurance in violation of section 17.50(a)(4) of the DTPA.

49. Each of the above-described acts, omissions, and failures of Mt. Hawley is a producing cause of Plaintiff's damages. All of the above-described acts, omissions, and failures were committed "knowingly" and "intentionally," as defined by the Texas Deceptive Trade Practices Act.

**FRAUD**

50. All allegations above are incorporated herein.

51. Mt. Hawley is liable to Plaintiff for common law fraud.

52. Each and every misrepresentation described above concerned material facts that absent such representations, Plaintiff would not have acted as Plaintiff did, and Mt. Hawley knew its representations were false or made recklessly without any knowledge of their truth as a positive assertion.

53. Mt. Hawley made the statements intending that Plaintiff act upon them. Plaintiff then acted in reliance upon the statements, thereby causing Plaintiff to suffer injury constituting common law fraud.

## CAUSES OF ACTION AGAINST DEFENDANT KEVIN WILSON MAYFIELD

### NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE: UNFAIR SETTLEMENT PRACTICES

54. All allegations above are incorporated herein.

55. Mayfield's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Claim Settlement Practices Act. TEX. INS. CODE §541.060(a).

56. Mayfield is individually liable for his unfair and deceptive acts, irrespective of the fact that he was acting on behalf of Mt. Hawley, because Mayfield is a "person," as defined by TEX. INS. CODE §541.002(2).

57. Mayfield knowingly underestimated the amount of damage to the Properties. As such, Mayfield failed to adopt and implement reasonable standards for the investigation of the claim arising under the Policy. TEX. INS. CODE §542.003(3).

58. Furthermore, Mayfield did not attempt in good faith to affect a fair, prompt, and equitable settlement of the claim. TEX. INS. CODE §542.003(4).

EXHIBIT B

59. Mayfield's unfair settlement practice of failing to provide Plaintiff a prompt and reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for denial of the claim, also constitutes an unfair method of competition and an unfair and deceptive act or practice. TEX. INS. CODE §541.060(a)(3).

60. Mayfield's unfair settlement practice of failing to attempt in good faith to make a prompt, fair, and equitable settlement of the claim, even though liability under the Policy was reasonably clear, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(2)(A).

**DTPA VIOLATIONS**

61. All allegations above are incorporated herein.

62. Mayfield's conduct constitutes multiple violations of the Texas Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE 17.41–63. Plaintiff is a consumer of goods and services provided by Mayfield pursuant to the DTPA. Plaintiff has met all conditions precedent to bringing this cause of action against Mayfield. Specifically, Mayfield's violations of the DTPA include the following matters:

A. By this Defendant's acts, omissions, failures, and conduct, Mayfield has violated sections 17.46(b)(2), (5), and (7) of the DTPA. Mayfield's violations include, (1) failure to give Plaintiff the benefit of the doubt, and (2) failure to write up an estimate reflecting the proper repair of Plaintiff's Properties when liability has become reasonably clear, which gives Plaintiff the right to recover under section 17.46(b)(2).

B. Mayfield represented to Plaintiff that the Policy and his adjusting and investigative

**EXHIBIT B**

services had characteristics or benefits they did not possess, which gives Plaintiff the right to recover under section 17.46(b)(5) of the DTPA.

C. Mayfield represented to Plaintiff that the Policy and his adjusting services were of a particular standard, quality, or grade when they were of another, in violation of section 17.46(b)(7) of the DTPA.

D. Mayfield's actions are unconscionable in that Mayfield took advantage of Plaintiff's lack of knowledge, ability, and experience to a grossly unfair degree. Mayfield's unconscionable conduct gives Plaintiff a right to relief under section 17.50(a)(3) of the DTPA; and

E. Mayfield's conduct, acts, omissions, and failures, as described in this petition, are unfair practices in the business of insurance in violation of section 17.50(a)(4) of the DTPA.

63. Each of Mayfield's above-described acts, omissions, and failures is a producing cause of Plaintiff's damages. All acts, omissions, and failures were committed "knowingly" and "intentionally" by Mayfield, as defined by the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE 17.45.

**FRAUD**

64. All allegations above are incorporated herein.

65. Mt. Hawley assigned or hired Mayfield to adjust the claim.

a. Mayfield had a vested interest in undervaluing the claims assigned to him by Mt. Hawley in order to maintain his employment.

b. Furthermore, Mayfield was aware of Plaintiff's deductible before having the

EXHIBIT B

Properties inspected. Mayfield had advanced knowledge of what amount of damages would need to be found in order to either deny the claim or find the claim below the deductible.

c. Mayfield made misrepresentations as to the amount of damage Plaintiff's Properties sustained as well as misrepresentations regarding how much it would cost to repair the damage to Plaintiff's Properties.

**NEGLIGENCE**

66. All allegations above are incorporated herein.

67. Mayfield was negligent in his actions with regard to his adjusting of Plaintiff's claim and violated the standard of care for an insurance adjuster licensed in the state of Texas. Those failures include one or more of the following acts or omissions:

a. Failure to conduct a reasonable inspection;

b. Failure to include covered damage that would be discovered as a result of reasonable inspection;

c. Failure to identify the proper cause and scope of the damage to Plaintiff's Properties;

d. Failure to identify the cost of proper repairs to Plaintiff's Properties; and

e. Failure to communicate to Plaintiff the reasons for specific determinations made regarding the inclusion or exclusion of damage to Plaintiff's Properties.

68. Mayfield's acts and/or omissions constitute negligence. His conduct was therefore a proximate cause of the damages sustained by Plaintiff.

69. At all relevant times, Mayfield was an agent or employee of Defendant Mt. Hawley.

**EXHIBIT B**

70. Mayfield's unreasonable inspection was performed within the course and scope of his duties with Defendant Mt. Hawley. Therefore, Mt. Hawley is also liable for the negligence of Mayfield through the doctrine of respondeat superior.

**GROSS NEGLIGENCE**

71. All allegations above are incorporated herein.

72. Mayfield's actions or omissions constitute gross negligence as defined in TEX. CIV. P. & REM. CODE § 41.001 (11)(A) and (B):

a. Mayfield's actions, when viewed objectively from the standpoint of the actor at the time of their occurrence involves an extreme degree of risk, considering the probability and magnitude of potential harm to Plaintiff; and

b. Mayfield had actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights, safety, and/or welfare of Plaintiffs.

73. Mayfield intentionally misrepresented the scope and amount of damages on the estimate prepared for Plaintiff's Properties on behalf of Mt. Hawley.

**KNOWLEDGE**

74. Defendants made each of the acts described above, together and singularly, "knowingly," as defined in the Texas Insurance Code, and each was a producing cause of Plaintiff's damages described herein.

**EXHIBIT B**

## WAIVER AND ESTOPPEL

75. Defendants waived and are estopped from asserting any coverage defenses, conditions, exclusions, or exceptions to coverage not contained in any reservation of rights letter to Plaintiff.

## DAMAGES

76. Since the claim was made, Mt. Hawley has not properly compensated Plaintiff for all necessary repairs required, which are covered under the Policy. This has caused undue hardship and burden to Plaintiff. These damages are a direct result of Defendants' mishandling of Plaintiff's claim in violation of the laws set forth above.

77. Defendants made the above and other false representations to Plaintiff, either knowingly or recklessly, as a positive assertion, without knowledge of the truth. Defendants made these false misrepresentations with the intent that Plaintiff act in accordance with the misrepresentations. Plaintiff then relied on these misrepresentations, including but not limited to those regarding coverage and the cause and scope of damage. Plaintiff suffered damages as a result.

78. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of damages sustained. The acts, omissions, failures, and conduct of Defendants have caused Plaintiff's damages, which include, without limitation, costs for all necessary repairs required to be made to Plaintiff's Properties, and any investigative and engineering fees incurred.

79. For breach of contract, Plaintiff is entitled to regain the benefit of Plaintiff's bargain, which is the amount of Plaintiff's claim, consequential damages, together with attorney's fees.

**EXHIBIT B**

80. The damage to Plaintiff's Properties is currently estimated at $531,270.66 for the 3926 Avenue H, Rosenberg, Texas 77471 property and $539,245.70 for the 3806 Avenue I, Rosenberg, Texas 77471 property.

81. For noncompliance with the DTPA and Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefits owed pursuant to the Policy, court costs, and attorney's fees. For knowing and intentional conduct of the acts described above, Plaintiff asks for three (3) times Plaintiff's actual damages. TEX. INS. CODE §541.152 and TEX. BUS. & COM. CODE 17.50(B)(1).

82. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of Plaintiff's claim, plus an eighteen percent (18%) per annum penalty on that claim, as damages, as well as pre-judgment interest and reasonable attorney's fees. TEX. INS. CODE §542.060.

83. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from Defendants' breach of duty, such as additional costs, economic hardship, losses due to nonpayment of money Mt. Hawley owed, and exemplary damages.

84. Defendants' breach of the common law duty of good faith and fair dealing was committed intentionally, with a conscious indifference to Plaintiff's rights and welfare, and with "malice," as that term is defined in Chapter 41 of the Texas Civil Practices and Remedies Code. These violations are the type of conduct which the State of Texas protects its citizens against by the imposition of exemplary damages. Therefore, Plaintiff seeks the recovery of exemplary damages in an amount determined by the finder of fact sufficient to punish

EXHIBIT B

Defendants for their wrongful conduct and to set an example to deter Defendants and others from committing similar acts in the future.

85. For fraud, Plaintiff is entitled to recover actual and exemplary damages for knowingly fraudulent and malicious representations, along with attorney's fees, interest, and court costs.

86. For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorneys subscribed to this pleading. Therefore, under Chapter 38 of the Texas Civil Practices and Remedies Code, sections 541 and 542 of the Texas Insurance Code, and section 17.50 of the DTPA, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.

87. As required by Rule 47(b) of the Texas Rules of Civil Procedure, Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c)(5) of the Texas Rules of Civil Procedure, Plaintiff's counsel states that Plaintiff seeks only monetary relief of no less than $1,000,000.00. A jury will ultimately determine the monetary relief actually awarded, however. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

**REQUESTS FOR DISCLOSURE**

88. Under Texas Rules of Civil Procedure 190 and 194, Plaintiff requests that Defendants disclose, within fifty (50) days from the date this request is served, the information or material described in Rules 190.2(b)(6) and 194.2.

**EXHIBIT B**

**JURY DEMAND**

89. Plaintiff hereby requests a jury trial for all causes of action alleged herein, tried before a jury consisting of citizens residing in Fort Bend County, Texas. Plaintiff hereby tenders the appropriate jury fee.

**PRAYER**

Plaintiff prays that Defendants, Mt. Hawley Insurance Company and Kevin Wilson Mayfield, be cited and served to appear, and that upon trial hereof, Plaintiff, Tarsem Agarwal, has and recovers from Defendants, Mt. Hawley Insurance Company and Kevin Wilson Mayfield, such sums as would reasonably and justly compensate Plaintiff in accordance with the rules of law and procedure, as to actual, consequential, and treble damages under the Texas Insurance Code and Texas Deceptive Trade Practices Act, and all punitive, additional, and exemplary damages, as may be found. In addition, Plaintiff requests the award of attorney's fees for the trial and any appeal of this case, for all costs of Court expended on Plaintiff's behalf, for pre-judgment and post-judgment interest as allowed by law; and for any other and further relief, at law or in equity, to which Plaintiff, Tarsem Agarwal, may show Plaintiff is justly entitled.

Respectfully submitted,

CHAD T WILSON LAW FIRM PLLC

By: */s/ Chad T. Wilson*

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Kimberly N. Blum
Bar No. 24092148
1322 Space Park Drive, Suite A155
Houston, Texas 77058
Telephone: (832) 415-1432
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**EXHIBIT B**

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ATTORNEYS FOR PLAINTIFF

EXHIBIT B

**Heidi Vornholt**

| | |
|---|---|
| **From:** | No-Reply@eFileTexas.gov |
| **Sent:** | Monday, November 07, 2016 11:41 AM |
| **To:** | Heidi Vornholt |
| **Subject:** | Filing Submitted for Case: 16-DCV-236818; Tarsem Agarwal vs Mt. Hawley Insurance Company, Kevin Wilson Mayfield; Envelope Number: 13653195 |

# Filing Submitted

Envelope Number: 13653195
Case Number: 16-DCV-236818
Case Style: Tarsem Agarwal vs Mt. Hawley Insurance Company, Kevin Wilson Mayfield

The filing below has been submitted to the clerk's office for review. Please allow 24 - 48 hours for clerk office processing.

| Filing Details | |
|---|---|
| **Court** | Fort Bend County - District Clerk |
| **Date/Time Submitted** | 11/7/2016 11:40:08 AM CST |
| **Filing Type** | Answer/Response |
| **Filing Description** | Defendant Mt. Hawley Insurance Company's Original Answer |
| **Type of Filing** | EFile |
| **Filed By** | Heidi Vornholt |
| **Filing Attorney** | Michael Feiler |

**Fee Details**

Your account is never charged until your filing is accepted. If you see any pending charges on your account prior to acceptance, this is an authorization hold to ensure the funds are available so your filing can be accepted without delay.

If the filing is canceled or rejected these funds will be released and will return to your account according to your financial institution's policies (typically 3-10 business days).

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| | |
|---|---|
| Case Fee Information | $2.06 |
| Payment Service Fees | $0.06 |
| Court Transaction Fees | $2.00 |
| Answer/Response | $0.00 |

**Total:**$2.06 (The envelope still has pending filings and the fees are subject to change)

| Document Details | |
|---|---|
| **Lead Document** | Original Answer(1).pdf |

**EXHIBIT C**

| | |
|---|---|
| **Lead Document Page Count** | 5 |
| **File Copy** | Download Document |
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**EXHIBIT C**

CAUSE NO. 16-DCV-236818

| | | |
|---|---|---|
| TARSEM AGARWAL | § | IN THE DISTRICT COURT |
| | § | |
| | § | |
| vs. | § | 434TH JUDICIAL DISTRICT |
| | § | |
| MT. HAWLEY INSURANCE COMPANY | § | |
| and KEVIN WILSON MAYFIELD | § | FORT BEND COUNTY, TEXAS |

**DEFENDANT MT. HAWLEY INSURANCE COMPANY'S**
**ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Mt. Hawley Insurance Company ("Defendant"), and files this its Original Answer to Plaintiff's Original Petition, and would respectfully show the Court as follows:

## GENERAL DENIAL

Defendant denies all and singular the allegations contained in Plaintiff's Original Petition, demands strict proof thereof, and says that this is a matter for jury decision.

## AFFIRMATIVE DEFENSES

### First Affirmative Defense

Answering further, if such be necessary, Plaintiff has failed to state claims upon which relief may be granted.

### Second Affirmative Defense

**Exclusion B.1.a.** of the Mt. Hawley policy excludes coverage for loss caused directly or indirectly by the enforcement of any ordinance or law regulating the construction, use, or repair of the property at issue, or that requires the tearing down of any property, including the costs of removing its debris. Thus, Plaintiff's claims are barred to the extent the enforcement of any such

**EXHIBIT C**

ordinance or law requires tearing down of, or repairs or upgrades to, the property not necessitated by damage resulting directly from a covered physical loss.

## Third Affirmative Defense

**Exclusion B.2.d**. of the Mt. Hawley policy excludes coverage for loss or damage caused by wear and tear, rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself, settling, cracking, shrinking, or expansion. To the extent Plaintiff's property was damaged by any of these causes, there can be no coverage for such loss.

## Fourth Affirmative Defense

**Exclusion B.2.m**. of the Mt. Hawley policy excludes coverage for loss or damage caused by the neglect of an insured to use reasonable means to save and preserve property from further damage at and after the time of loss. Plaintiff's claims are barred to the extent it is determined that he did not use reasonable means to save and preserve the property from further damage at and after loss.

## Fifth Affirmative Defense

**Exclusion B.3.a**. of the Mt. Hawley policy excludes coverage for loss or damage caused by weather conditions that contribute in any way with a cause or event excluded by **Exclusion B.1.a**. Plaintiff's claims are barred to the extent it is determined that his alleged loss resulted from any cause identified in **Exclusion B.1.a**.

## Sixth Affirmative Defense

**Exclusion B.3.c**. of the Mt. Hawley policy excludes coverage for loss or damage caused by faulty, inadequate or defective design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction, materials used in repair, construction, renovation

**EXHIBIT C**

or remodeling, or maintenance. Plaintiff's claims are barred to the extent it is determined that his alleged loss resulted from any cause identified in **Exclusion B.3.c**.

**Seventh Affirmative Defense**

**Section E.3** of the Mt. Hawley policy requires, as a condition to coverage, that the insured take all reasonable steps to protect the Covered Property from further damage and to keep a record of the expenses necessary to do so. Upon information and belief, Plaintiff did not take reasonable steps to protect the property after loss.

**Eighth Affirmative Defense**

**Section C.1.c**. of the Mt. Hawley policy bars coverage for any damage to the interior of the insured property caused by or resulting from rain, snow, sleet, ice, sand, or dust, unless the property first sustains damage by a covered cause of loss to its roofs or walls. As there was no damage to the roofs or walls of Plaintiff's property caused by a covered cause of loss, there can be no coverage for any interior damage to the property.

**Ninth Affirmative Defense**

**Section H.1.a**. of the Mt. Hawley policy limits coverage to loss or damage commencing during the policy period shown in the declarations. To the extent Plaintiff's alleged damage occurred either before or after the Mt. Hawley policy period, there can be no coverage for such damage.

**Tenth Affirmative Defense**

**Section E.3.a.** of the Mt. Hawley policy requires, as a condition of coverage, that the insured cooperate with Mt. Hawley in the investigation of the claim. Plaintiff failed to cooperate with Mt. Hawley by, among other things, failing and refusing to provide Mt. Hawley with documents and information requested pertaining to the investigation of the alleged damage. As such, there can be no coverage for any alleged damage to Plaintiff's property.

## Eleventh Affirmative Defense

**Section E.3.b.** of the Mt. Hawley policy requires, as a condition of coverage, that the insured allow himself to be examined under oath if such examination is requested by Mt. Hawley. Despite Mt. Hawley's repeated requests for such an examination under oath, Plaintiff failed and refused to be examined. As such, there can be no coverage for any alleged damage to Plaintiff's property.

## Twelfth Affirmative Defense

**Section D.1.** of the Mt. Hawley policy precludes legal action against Mt. Hawley unless the insured has fully complied with all terms and conditions therein. Plaintiff failed to comply with all terms and conditions of the Mt. Hawley policy, as set forth hereinabove. As such, Plaintiff has no standing to bring this legal action against Mt. Hawley.

## Thirteenth Affirmative Defense

Plaintiff's claims are barred, in whole or part, by the doctrine of waiver and/or estoppel by contract and/or deed.

WHEREFORE, PREMISES CONSIDERED, Defendant Mt. Hawley Insurance Company respectfully requests that Plaintiff take nothing and for such other and further relief to which it is justly entitled.

Respectfully submitted,

*/s/ Greg K. Winslett*

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**ATTORNEYS FOR DEFENDANT MT. HAWLEY INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I certify that on the 7th day of November, 2016, a true and correct copy of the foregoing was sent via *Facsimile*, to counsel for Plaintiff.

*/s/ Greg K. Winslett*____________________
GREG K. WINSLETT
MICHAEL D. FEILER
4850-2826-9372, v. 1

**EXHIBIT C**

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| TARSEM AGARWAL,<br><br>PLAINTIFF<br><br>v.<br><br>MT. HAWLEY INSURANCE COMPANY and KEVIN WILSON MAYFIELD<br><br>DEFENDANTS. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | CIVIL ACTION NO. ____________ |

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**LIST OF COUNSEL OF RECORD**

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**EXHIBIT D**

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| TARSEM AGARWAL, | § | |
| | § | |
| PLAINTIFF | § | |
| | § | |
| v. | § | CIVIL ACTION NO. ____________ |
| | § | |
| MT. HAWLEY INSURANCE | § | |
| COMPANY and KEVIN WILSON MAYFIELD | § | |
| | § | |
| DEFENDANTS. | § | |
| | § | |

## INDEX OF STATE COURT DOCUMENTS

| No. | Date Filed or Entered | Document |
|---|---|---|
| **A** | N/A | State Court Docket |
| **B** | 11/04/2016 | Plaintiff's Original Petition and Civil Cover Sheet |
| **C** | 11/07/2016 | Defendant Mt. Hawley Insurance Company's Original Answer |
| **D** | N/A | List of Counsel of Record |
| **E** | N/A | Index of State Court Documents |

4816-7551-3404, v. 1

**EXHIBIT E**